



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2018-0588; FRL-9990-45-Region 5]

**Air Plan Approval; Minnesota; Commercial and Industrial Solid
Waste Incineration Units and Other Solid Waste Incineration
Units Negative Declarations for Designated Facilities and
Pollutants**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that we have received negative declarations from Minnesota pertaining to the presence of Commercial and Industrial Solid Waste Incineration (CISWI) units and Other Solid Waste Incineration (OSWI) units in Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted its CISWI negative declaration by letter dated February 3, 2017, and its OSWI negative declaration by letter dated June 21, 2017. MPCA notified EPA in its negative declaration letters that there are no CISWI or OSWI units subject to the requirements of the Clean Air Act (Act) currently operating in Minnesota. On September 27, 2018, EPA published a notice of proposed rulemaking for these declarations.

DATES: This final rule is effective on **[insert date 30 days**

after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0588. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353-1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois 60604, (312) 353-1151, sieffert.margaret@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. What Action is EPA Taking?

III. Statutory and Executive Order Reviews

I. Background

On February 3, 2017, MPCA submitted its CISWI negative declaration, in which MPCA certified that there are no existing CISWI units currently operating in Minnesota.

On June 21, 2017, MPCA submitted its OSWI negative declaration, in which it certified that there are no existing OSWI units currently operating in Minnesota.

On September 27, 2018, EPA published a notice of proposed rulemaking (NPRM) proposing notice of Minnesota's negative declarations for CISWI and OSWI. The specific details of Minnesota's request and the rationale for EPA's approval are discussed in the NPRM and will not be restated here. EPA did not receive any comments on the proposed action.

II. What Action is EPA Taking?

EPA is notifying the public of EPA's receipt of MPCA's negative declarations for both CISWI and OSWI facilities and amending 40 CFR part 62 to reflect both negative declarations. For CISWI, EPA received the negative declaration on February 3, 2017, and for OSWI, EPA received the negative declaration on June 21, 2017. In this action, EPA is finalizing its notification. EPA is also adding 40 CFR part 62.5880 and

62.5890 to reflect these notifications.

III. Statutory and Executive Order Reviews

A. General Requirements

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA's receipt of negative declarations from an air pollution control agency without any existing CISWI or OSWI units in its state. This action imposes no requirements beyond those imposed by the state. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule pertains to pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not

contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4). This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely provides notice of receipt of negative declarations, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it just notifying the public regarding receipt of the negative declarations.

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. With regard to negative declarations for designated

facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR Part 62 accordingly. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission or negative declaration for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan or negative declaration submission, to use VCS in place of a state plan or negative declaration submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Environmental protection, Commercial and Industrial Solid Waste Incinerators, Intergovernmental relations, Other Solid Waste Incinerator Units, Reporting and record-keeping requirements.

Dated: February 25, 2019.

Cheryl L Newton,
Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Add §§ 62.5880 and 62.5890 and their undesignated center headings to subpart Y to read as follows:

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**CONTROL OF AIR EMISSIONS FROM COMMERCIAL AND INDUSTRIAL SOLID
WASTE INCINERATION UNITS**

§ 62.5880 Identification of plan - negative declaration.

On February 3, 2017, the Minnesota Pollution Control Agency submitted a negative declaration letter to EPA certifying that there are no existing Commercial and Industrial Solid Waste Incineration (CISWI) units in the State of Minnesota subject to the emissions guidelines at 40 CFR part 60, subpart DDDD.

**CONTROL OF AIR EMISSIONS FROM OTHER SOLID WASTE INCINERATION
UNITS**

§ 62.5890 Identification of plan - negative declaration.

On June 21, 2017, the Minnesota Pollution Control Agency submitted a negative declaration letter to EPA certifying that there are no existing Other Solid Waste Incineration (OSWI)

units in the State of Minnesota subject to the emissions
guidelines at 40 CFR part 60, subpart FFFF.

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